

CIVIL RIGHTS ENFORCEMENT AND COMPLIANCE
COMPLIANCE AND EVALUATIONS BRANCH
GUIDE TO PREPARING COMPLIANCE REVIEW REPORTS

(For Internal Use Only)

Note: This guide is intended for use by all CREC staff members selected to conduct Title VII (Employment) and Title VI (Program) compliance reviews. The reviews should be conducted with efficiency and thoroughness to ensure accurate reporting and recommendations.

Civil Rights Enforcement and Compliance is required to schedule, plan, and conduct several compliance reviews annually. The purpose of these reviews is to determine compliance with agency and Federal laws, regulations, and guidelines as they relate to Federal Civil Rights Programs and initiatives. The focus of all compliance reviews is the degree to which progress is being made toward a "Model EEO Program" as outlined in EEOC Management Directive 715 (MD 715) and to ensure civil rights compliance in program delivery. This includes the identification and elimination of barriers to full employment and program benefits for minorities, women, and people with disabilities.

To improve the efficiency of the CREC Compliance review process, in June 2005, we will test an online survey instrument. The test will be conducted for 120 days with full implementation beginning Fiscal Year 06. This online instrument will eliminate the need to address, mail, and manually tally compliance review survey results.

Part A - Preparation and Timelines for Conducting a Compliance Review

- ☐ 1. **Compliance Review Schedule** - The Assistant Director, CREC, will develop and disseminate a compliance review schedule covering at least 2 fiscal years. The schedule should be posted on the CREC Website in September and cover onsite and desk reviews from October to March. A second schedule will be posted in February and cover onsite and desk reviews from March to September. The second schedule will not be posted until after all reviews and for the first half of the year are completed and the Compliance Review reports are approved and distributed.

- ☐ 2. **Completion of the Review** - Compliance Reviews must be completed and reports written in 60 days from the date of end of the onsite or desk review. Monthly reports, due the 25th of each month, must include compliance review progress.
- ☐ 3. **Pre-review Data Collection and Analysis** - The Specialist assigned to conduct the review should prepare and submit for approval to the Assistant Director, a list of the type of data required to conduct a thorough analysis. The list should indicate the data source, FOCUS, CREC, or Program area. Review team members should use the Focus Reporting System or other automated/electronic sources to the maximum extent possible to obtain the data. Data/documentation requests to the program/unit under review should request only that information that the team cannot collect on its own, and not require the reviewed program/unit to create records that are not normally kept and maintained, i.e. the reviewed unit should not be required to search past files or create new data reports to response to the request. The reviewed unit or program should be advised that if the data is not readily available, the response to that request should state as such. The data request should be included with the letter announcing the compliance review.
- ☐ 4. **Announcement Letter** - A letter announcing the compliance review should be prepared for the Assistant Director's signature. The letter should be signed and mailed up to 60 but no later than 30 days before the compliance review begins. The letter will include a brief description of the authority for conducting the review, brief description of the process i.e. survey, data request, analysis; and the request for data/documentation. The letter should request the name of a contact person for the data and information request. An organizational chart should be requested or downloaded from the program's website.
- ☐ 5. **Title VII Employment Data Requirements** (up to 3 years if available) and Data Source
 - ☐ a. Work Force Profile by RSNO and Disability - Focus
 - Does Under representation exist? If so, what group(s)

- ☐ b. Competitive Promotions by RSNO and Disability - Focus
 Note: The lack of promotions for one group should be researched prior to making a determination of "unfair" treatment. In order to identify unfair treatment, the Reviewer would need to know if members of the group applied for the position; filed EEO Complaints of Non selection, etc.
- ☐ c. Non competitive Promotions by RSNO and Disability - Focus
- ☐ d. Total Number of Open (formal) Employment Discrimination Complaints - CREC. Due to USDA Complaint backlogs, it is important to know the year(s) the complaint was filed. It may not be current activity.
- ☐ e. Total Number of Employment Discrimination Complaints closed in the past three years. - CREC
- ☐ f. Number of Annual and Mid Year Performance Reviews vs. total number of employees - Reviewed Unit Contact
- ☐ g. Number of Employees completing Mandatory Civil Rights Training during past year up to three years - Employee Services Division - Training Branch.
- ☐ h. EEO Advisory Committee Minutes - CREC/Advisory Committee Chair
- ☐ i. Type of Special Observance Programs Conducted - CREC/Program SEPMS
- ☐ j. Recruitment Activities Conducted - Who, When, Where - Reviewed Unit Contact
- ☐ k. Number of Scholars, Summer Hires, Disability Hires by the Unit - CREC
- ☐ l. Number of Employees w/ Individual Development Plan - Survey
- ☐ m. Number of Employees participating in Job Related Training - Survey
- ☐ n. Number of employees in Public Contact Positions - Reviewed Unit Contact
- ☐ o. Number of external competitive selections by RSNO occupational series and disability made during each of the past 3 fiscal years - FOCUS
- ☐ p. Number of separations from the unit by RSNO occupational series and disability made during each of the past 3 fiscal years - FOCUS

- ☐ q Total Funding committed to individual training (if available), for past 3 fiscal years - Reviewed Unit Contact.
- ☐ r. The existence internal Standard Operating Procedures relating to Administrative policies regarding time and attendance, work at home, flexible work schedules, etc., should be determined in advance. If internal operating procedures do not exist then compliance should be determined against MRP procedures outlined. These procedures are on line.
- ☐ s. Training Data_- The "Ag Learn" System will (in the future), contain training completed by all employees. At this time, collecting these data is a time consuming manual process that must be accomplished by the administrative staff at the review location. Until the Ag Learn system is fully operative, summary training information will be collected from the responses to the survey questionnaire. Appropriate survey questions will be developed to capture needed training data.
- ☐ 6. Title VI Program Delivery Data Requirements (up to 3 years if available) and Data Source
 - ☐ a. Complaints of Discrimination or Unfair Treatment by the Public - CREC and Reviewed Unit Contact.
 - ☐ b. Cooperative Agreements (sample 3 -5) - Reviewed Unit Contact
 - ☐ c. Program Brochures or Handouts in Languages other than English - Reviewed Unit Contact.
 - ☐ d. Requests from Disabled Persons for Accommodation to Access the Program - Reviewed Unit Contact.
 - ☐ e. Program Participation Data - total numbers of persons served, geographic location (only if information is maintained) - Reviewed Unit Contact
 - ☐ f. Public Notification and Outreach - notices, announcements, or other written or media communications to inform the public of the availability of programs and services - Reviewed Unit Contact

□ **7. Adapting the Survey Questionnaire** - The CREC standard survey questionnaire will be reviewed prior to each compliance review and prior to loading the survey questions in the automated system. Separate surveys will be developed for managers and supervisors and employees. Questions will be added, revised, or changed to ensure the information needed on specific topics and programs and activities is obtained. The online survey system will send the surveys, analyze the responses, and prepare the reports. Specialists will, once the system is on line, only need to review the survey results. The Review Team's management analyst will administer the survey system. The survey report will be included as an attachment to the report. This questionnaire should contain questions relative to Civil Rights Performance Measures for Managers and Supervisors. Team members should consult with the EEO Branch for this information. To ensure data on specific topics is obtained, it may be necessary to add, revise, or change survey questions, as needed. Revised Survey Questionnaires must be approved by the Assistant Director.

□ 8. The new "online" survey system will be managed by the team Management Analyst who will include approved amendments and additions; load surveys; electronically send the surveys to review site employees; analyze the responses, and prepare/run the reports. The report will be given to the specialist(s) assigned to conduct the reviews. **Specialists will, once the system is on line, only need to review and attach the survey analysis to the CRR.** There will no longer be a need to mail surveys and manually tally the results; however, survey data will be included in the Compliance Review Report. The review team will analyze available data such Assessment Reports, Work Force Profiles, Disability hiring data; EEO complaint data, recruitment data, EEO Advisory Committee meeting minutes, comments from SEPMS, etc. to identify any barrier to EEO or significant equal opportunity issues (organization-wide, not individual complaints) and will incorporate that information into the survey questionnaire to elicit feedback from employees and managers/supervisors.

The number of surveys sent and the number and percent of respondents must be included in the Review report. Survey data may not be used to determine compliance or non compliance unless supported by an analysis of all available data. To ensure the supervisor and/or manager understands the

number of respondents, survey results must be shown in comparative numbers and percents. Example: 10 of 20 (50%) of the respondents participated in mandatory civil rights training.

Managers should be surveyed separately to determine awareness of their responsibilities in the prevention of discrimination complaints, i.e. Vicarious Liability, Anti Harassment policies, selection procedures, civil rights performance, etc. Surveys for employees with non-supervisory duties should focus on knowledge of civil rights concepts and requirements such as program complaint receipt procedures, accessibility to program/activities by disabled persons, and Limited English Proficiency.

9. Post survey interviews. Such interviews will be used only to clarify or confirm major issues that appeared in earlier data review or electronic survey. Interviews should be open and should focus on barriers identified in pre review analyses and in the survey instrument. Questions should be probing "not yes or no" and should focus on identifying and eliminating barriers. Persons raising individual complaint issues should be advised that purpose of review is to examine organization's structure and operation to assess compliance with civil rights laws and regulations. Referral to counseling contact telephone number is the appropriate response to individual issues.

- ☐ 10. Compliance team staff will periodically brief the Assistant Director and/or the CREC Management Team on the progress and issues of the review.
- ☐ 11. Review of Draft by the Program/Unit Manager. The manager will be allowed to review the final draft of the report for a period of 3 business days and provide any comments. This review will come after approval of the final draft by the Assistant Director. CREC will thoroughly review all comments before formally issuing the report.

Part B - Compliance Review Report (CRR) Format

- ☐ 1. The compliance review report (CRR) will include at least 2 but no more than 10 pages. The shorter reports should be in the format of a memorandum. The longer reports, 4 to 10 pages, should include a cover

letter with the Analysis, Findings and Recommendations included in an enclosure. The letter should advise general compliance, general non compliance, and minimal compliance w/time frames.

- ☐ 2. The CRR will be signed by the Assistant Director, CREC with copies to the Director and Deputy Director and appropriate officials in the Unit.
- ☐ 3. The CRR will be addressed to the facility, branch, or program manager.
- ☐ 4. The CRR will be in black print only, this includes graphics.

Part C - Compliance Review Report - Content

1. The opening paragraph will include the purpose of the review; the laws and regulations; guidelines or procedures the program is measured against, general outline of the types of documents/data analyzed, and the total number and percent of employees were surveyed and/or interviewed.

Sample Paragraph:

Departmental regulations provide that agencies periodically review their processes, programs, and activities to ensure that they are in compliance with various laws, regulations and directives governing equal opportunity in both employment and program delivery. The primary civil rights laws and regulations applicable to our review of [insert program/unit reviewed] are Titles VI and VII of the Civil Rights Act of 1964, We examined [insert general description of data/documents examined]. We also received survey responses from [insert number], and interviewed [insert number] employees.

2. Survey Data enclosures will be summarized by the electronic survey system. Charts and graphs will be included in numbered Enclosures or Exhibits.

Example: Summary of Survey Results

Survey Question	# Respondents	Results				
		A	D	N	A	SA
1. Managers and Supervisors are provided EEO and Civil Rights Training Annually	10	2	2	2	2	2

3. The CRR should contain a section the title Analysis and Findings. The Analysis and Findings should be no more than 2 paragraphs, be followed by a Recommendation, and include a summary analysis; the specific findings, and a recommendation. The Analysis will identify strengths or weaknesses. The Findings will detail the weaknesses; and the Recommendation will outline corrective actions.

Example:

EEOC Compliance Elements

Prior to conducting your analysis, review and become familiar with the requirements supporting each of the six essential elements for a model EEO program and the elements for program delivery compliance.

Example: Analysis of Awards

Awards must be analyzed by category, i.e. Performance, Special Act, etc. Award amounts cannot be used as the sole criteria for determining fairness. For example: Ten performance awards could have been granted in a particular unit. Five of the awards may have been included in a group award with amounts at \$200 for each person. All of the members of the group were women. Five other awards may have been granted to men in grades 5 through 9. Each recipient received a step increase. A preliminary analysis without research would show that the men in GS 8 and 9 received greater amounts. However, individuals in the higher grade levels earn more thus the step increase was higher than the \$200 granted to each woman.

Applicability - Each analysis should take into consideration the number of employees in the unit and the work situation. For example, a small unit of 50 or fewer employees may not have an EEO Advisory Committee or Special Emphasis Program Managers. This small group may not have career ladder promotion potential and may not devote significant resources to recruitment and training programs.

Settlement Agreement Implementation - ALL settlement agreements are brokered by CREC, the hearings and appeals staff, or the Office of General Council, Civil Rights Division. Implementation of the terms of each agreement is a headquarters responsibility, usually CREC. Managers have no responsibility in the implementation of settlement agreements. The compliance team interviewer should educate employees who may perceive management has sole responsibility for settlement.

Example:

Analysis and Findings - Demonstrated Commitment

More strengths than weaknesses were identified in the area of Demonstrated commitment to civil rights. Managers developed an internal civil rights policy statement, and distributed it along with the statement developed by the agency administrator. The internal policy statement should have addressed areas identified in issues filed in current year EEO complaint data, i.e. harassment, retaliation, and reprisal. These issues were cited agency-wide; however the majority were raised in this program area. (Exhibit 1 APHIS 462 Report).

Recruitment initiatives were conducted but not focused which resulted in information sharing with applicants with no tracking system to determine if the initiative resulted in an increase in applicants. There was no indication of outreach to hire persons with disabilities; however, the percent of people with disabilities hired in previous years brings the current representation to 10%.

Recommendations - The unit is in general compliance with this element. At the beginning of the next fiscal year, a policy statement advising that work place harassment will not be tolerated should be included. Recruitment initiatives should be monitored and assessed to determine their effectiveness.

Part D - Tips for ensuring a comprehensive review report.

- ☐ 1. Avoid advising that an issue or topic will need more "investigation".

Research on all topics should be analyzed prior to drafting the report. Keep in mind that a Compliance Review is not an "Investigation".

- ☐ 2. When advising that a particular element is "not in compliance", cite the regulation, guideline or procedure and why the program unit is not in compliance. A recommendation on steps to use to meet the compliance objective should be included.
- ☐ 3. Avoid using employee opinion to determine "non compliance", always cite the rule, regulation or policy that is not being followed.
- ☐ 4. Information obtained from surveys or employee interviews should be researched and validated before being incorporated in the report.
- ☐ 5. Avoid speculating that a selection or promotion process was not "fair" unless documentation shows that members of a particular race/gender group have applied but were continuously not selected for a position.
- ☐ 6. When analyzing field programs against the 6 essential elements, keep in mind that many of these elements are implemented at the National level, i.e. funding for Mandatory Civil Rights Training.
- ☐ 7. Use EEOC descriptions when analyzing compliance for one or more of the Essential Elements. Consider the organizational level and size of the program being reviewed when determining compliance.
- ☐ 8. Include recommendations for action by CREC when appropriate.
Example: Employees do not know how to file an EEO Complaint; Managers do not know the program complaint process, etc. These items require action on the part of a unit in CREC. The team leader should be consulted.
- ☐ 9. Distinguish between program and employment outreach. Employment outreach includes recruitment and student program activities; program outreach is advising customers of the services and programs available in APHIS.

- ☐ 10. Research survey response information to determine if respondent(s) have a full understanding of the issue. Develop "Compliance" letters for the manager explaining the issue.

Example: Many employees believe that Civil Rights Issues are not addressed promptly and that managers do not take specific actions. This may mean that the employees do not understand that the EEO complaint process takes 180 days and that complaints are processed at the headquarters level. There also could be a need to advise that settlement agreements are not public and implementation is the responsibility of CREC.

- ☐ 11. Provide specific recommendations that are practical for the size and organizational location of the review unit. For example, a recommendation to an AVIC may be different than a recommendation made at the Regional level and a recommendation to a SITC, ALB or Citrus Canker team may be different than a recommendation made to a program director.
- ☐ 12. Keep in mind that once an EEO complaint is in the process, there is not an opportunity nor is it reasonable for a manager to discuss resolution with employees. In non EEO situations or disputes, open communication is critical, however, it may not resolve employee perception.
- ☐ 13. Be familiar with the requirements of the Civil Rights Performance Element and measures for managers and supervisors.
- ☐ 14. When referencing MD 715, USDA Mandatory training requirements, EEO Complaint Regulations, etc. include the location of the Reference, i.e. MD715 Section II - Understanding Barriers.
- ☐ 15. Avoid including assignments to Program Directors in your recommendations. For Example: Discrimination would be evident if promotions were granted strictly on the race and gender of the applicant, therefore it is not appropriate to state that no promotions were granted to a certain group unless the Reviewer has complaint information or applicant data showing that members of the race/gender group applied and were not selected for any positions for which they were eligible.

- ☐ 16. If internal procedures for granting awards do not exist, then the Reviewer should look at the Agency guidelines for awards.

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REVIEW PROGRESS AND TASK COMPLETION SHEET

Compliance Review Subject: [insert name of program/unit reviewed]

Start Date of Review: [insert start date of review]

Completion Date of Review: — — [insert completion date of review] — —

Specialist(s) Assigned: [name(s) of specialist(s) assigned to review]

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Signature of Specialist(s) @ Start Date	Date

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Signature of Specialist(s) @ Completion (submission of draft to Asst. Director)	Date

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Signature of Asst. Director (Review of Draft w/comments)	Date